

## **REMARKS**

Applicant respectfully requests entry of the above amendments and reconsideration of the following arguments pursuant to 37 C.F.R. § 1.111.

### **1. Amendments to the Specification**

Applicant amends the Specification to correct typographic errors. Support for the amendments can be found at least from lines 2-23, page 18 of the Specification. Applicant submits that the amendments to the Specification do not introduce any prohibited new matter. The Office's objection to the Specification is thus mooted. Applicant respectfully requests withdrawal of the objection.

### **2. Status of the Claims**

The status of the claims following entry of the amendments is as follows:

**Claims canceled:** 5-17, 22, 24, and 26-28

**Claims pending:** 1-4, 18-21, 23, and 25

**Claims allowed:** None

**Claims objected:** 18-23 and 25

**Claims rejected:** 1-4, 18-23, and 25

**Claims withdrawn:** 5-17, 24, and 26-28

**Claims amended:** 1-4, 18-21, 23, and 25

### **3. Support for the Amendments**

Applicant amends claims 1-4, 18-21, 23, and 25. Support for the amendments can be found at least in the original claims and the Specification, for example, as follows:

<b>Claim(s)</b>	<b>Exemplary Support</b>
1	original claim 1; Specification, page 20, lines 10-13
2	original claim 2
3	original claim 3
4	original claim 4; Specification, paragraph bridging pages 24-25
18	original claim 18

<b>Claim(s)</b>	<b>Exemplary Support</b>
19	original claim 19; Specification, section (5-2) spanning pages 32-37
20	original claim 20
21	original claim 21
23	original claim 23
25	original claim 25

Accordingly, Applicant does not believe that any prohibited new matter is being introduced by entry of the above amendments.

The claims have been amended without prejudice to, or disclaimer of, the canceled subject matter. Applicant reserves the right to file a continuation or divisional application on any subject matter canceled by way of amendment.

**4. Priority**

Applicant appreciates the Office's acknowledgement that the certified priority documents have been received from the International Bureau.

Applicant attaches hereto a verified English translation of the Japanese priority application, JP 2003-425673. By perfecting priority with this translation, Applicant claims benefit of the filing date of December 22, 2003. *See* 37 C.F.R. § 1.55(a) and M.P.E.P. § 706.02(b).

**5. Acceptance of Drawings**

Applicant appreciates the Office's acknowledgement that the drawing as filed is deemed acceptable.

**6. Information Disclosure Statements**

Applicant appreciates the Office's acknowledgement of the Information Disclosure Statements (IDSs) submitted June 22, 2006; May 15, 2007; June 7, 2007; and July 8, 2008. Applicant respectfully requests acknowledgement of the IDS submitted August 26, 2010 with the Office's next communication.

**7. Declaration**

The present application is the National Stage of International Application No. PCT/JP2004/019196 filed December 22, 2004. Applicant notes that the Declaration filed May 15, 2007 correctly lists PCT/JP2004/019196. Unfortunately due to a clerical error, the filing date of the application is listed as December 12, 2004 instead of December 22, 2004. Applicant believes that this defect is self-evidently cured, because the correct PCT application has been identified. In fact, the Filing Receipt mailed November 20, 2007 correctly states that “[t]his application is a 371 of PCT/JP04/19196 12/22/2004.” Applicant respectfully requests that the Office note the defect and waive the deficiency by hand annotating the correction on to the Declaration and providing an indication of why it is waived. *See, e.g.*, M.P.E.P. § 602.03 (the Examiner may waive “[m]inor deficiencies in the body of the oath or declaration where the deficiencies are self-evidently cured in the rest of the oath or declaration.”). Applicant respectfully requests acknowledgement of this request in the Office’s next communication.

**8. Claim Objections**

The Office objects to claims 18-20 and 25 for reciting “a gene of claim 1.” Office Action, ¶ 4. As amended, claims 18-20 and 25 no longer recite the objected phrase. The objection is thus mooted. Applicant respectfully requests withdrawal of the objection and allowance of the claims.

The Office also objects claims 21-23 for reciting “a plant of claim 20.” *Id.* As amended, claims 21 and 23 no longer recite the objected phrase. Claim 22 is canceled. The objection is thus mooted. Applicant respectfully requests withdrawal of the objection and allowance of the claims.

**9. Rejections Under 35 U.S.C. § 112, Second Paragraph (Indefiniteness)**

The Office rejects claims 1-4, 18-23, and 25 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. The Office alleges that the term “gene” is indefinite. Office Action, ¶¶ 6-7. As amended, claims 1-4, 18-21, 23, and 25 recite “nucleic acid” instead of “gene.” Claim 22 is canceled. The Office’s rejection is thus mooted. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

Claims 20-23 are allegedly indefinite for reciting “a progeny of the plant, a vegetatively propagated plant having the same characteristics, or a tissue of the plant.” *Id.*, ¶ 8. It is allegedly unclear as to (1) what the vegetatively propagated plant is propagated from; and (2) what characteristics are “the same characteristics.” As amended, claims 20-21 and 23 recite “a progeny of the plant, a vegetatively propagated plant of the plant, or a tissue of the plant” having the isolated nucleic acid of claim 1 expressed therein. The amended claims no longer recite “the same characteristics.” Claim 22 is canceled. The Office’s rejection is thus mooted. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

**10. Rejection of the Claims Under 35 U.S.C. § 101**

The Office rejects claims 19-22 under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. The Office alleges that “transformant” recited in claim 19 may encompass a transformed human. Office Action, ¶ 9. As amended, claim 19 recites a “non-human transformant.” The Office’s rejection is thus mooted. Applicant respectfully requests withdrawal of the rejection and allowance of claim 19.

Claims 20-22 allegedly recite subject matter that may occur in nature. *Id.* As amended, claims 20-21 recite a plant, a progeny of the plant, a vegetatively propagated plant of the plant, or a tissue of the plant, each of which has the nucleic acid of claim 1 expressed therein. There is no evidence that the recited plant, progeny, vegetatively propagated plant, or tissue occurs in nature. Claim 22 is canceled. Accordingly, the rejection is mooted. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

**11. Rejection of the Claims Under 35 U.S.C. § 102**

The Office rejects claims 1-4, 18-23, and 25 under 35 U.S.C. § 102(a) as allegedly anticipated by **Kajikawa** et al., 54 Plant Mol. Bio. 335 (2004) (“Kajikawa”).

With the submission of a verified English translation of JP 2003-425673, Applicant has perfected priority to the instant Japanese application and the filing date of December 22, 2003. *See* Section 4 Priority, *supra*. The perfected filing date antedates the publication date of Kajikawa—February 2004. Thus, Kajikawa is no longer available as a prior art reference.

Claim 22 is canceled. Accordingly, the rejection is mooted. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

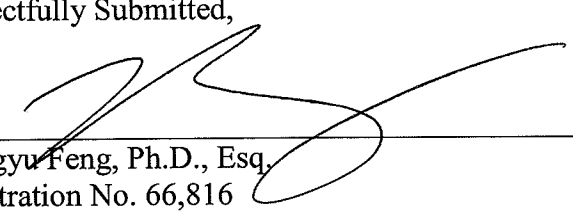
### CONCLUSION

The application is in condition for examination on the merits, which is respectfully requested. Should the Office have any questions or comments regarding Applicant's response, the Office is requested to contact Applicant's undersigned representative at (202) 230-5119. Furthermore, please direct all correspondence to the below-listed address.

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 50-0573 for any such fees; and Applicant hereby petitions for any needed extension of time.

Respectfully Submitted,

Date: September 28, 2010 By: \_\_\_\_\_

  
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